

From Tom Zhu

to PTO

at Sun 2/15/2009 10:04 PM 1/11

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This is the correspondence to the Notification of Non-Compliant Appeal Brief from the Primary Examiner Robert M. Fetsuga which was mailed on 01/15/2009.

I hereby certify that this correspondence (a total of 11 pages including this page) is being faxed to the United State Patent and Trademark Office under the Fax number of 571-273-8300 on February 15, 2009.

Tom Yuxin Zhu

Name



Signature

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APPEAL BRIEF

REAL PARTY IN INTEREST:

The real party in interest is Tom Yuxin Zhu.

RELATED APPEALS AND INTERFERENCES:

This appeal is for the following patent application:

APPILICATION No.: 10/730,447

FILING DATE: December 8, 2003

TITLE: SPLASH-PREVENTION PAPER

Group Art Unit: 3751

Examiner: Robert M. Fetsuga.

STATUS OF CLAIMS:

Claims (new) 29 to 37 are rejected.

Claims (new) 29 to 37 are being appealed.

STATUS OF AMENDMENTS:

No amendments have been filed subsequently to final rejection.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL:

The ground of rejection of the claims (new) 29-33 and 35-37 under 35 U.S.C. 102(b) is requested to be reviewed.

The ground of rejection of the claims (new) 29-37 under 35 U.S.C. 103 (a) is requested to be reviewed.

ARGUMENT:

1. For claims (new) 29-37 that are rejected under 35 U.S.C 103 (a) in the section 5, on pages 4-6 of the final office action issued on 8/29/2005.

The examiner talked about that using wax to create "a slippery surface" is obvious, in the section 5, on pages 4-6 of the final office action issued on 8/29/2005. But, the application of the present invention does not have any content about "create a slippery surface". The applicant had already explained this on 6/21/2005, on section 5, page 5 in the response to the second OA issue on 2/22/2005. The applicant believes that the examiner had never had a clear understanding on the content of the application of the present invention, and are not willing to acquire a clear understanding of the content of the application of the present invention, and are not willing to correct his error. The clear evidences of the lack of understandings of the subject and the lack of logical in the arguments of the examiner indicates that the reasons that the examiner used to reject claims (new) 29-37 are baseless. The examiner has not presented a convincing line of reasoning as to why the claimed subject matter would have been obvious.

Menter's device is very different in both structure and principle from that of the present invention. The only similarities of the Menter's device to the present invention are that Menter's device is generally for the same applications, and is also made by a piece of paper. Menter's device lacks of the novel features of the present invention. Menter's device lacks of the "floating arms" of the present invention, such that Menter's device will easily be sunk by the load on it. Menter's device also lacks of the substantially complete coverage of the water surface, because Menter's device rely on the opening (i.e. the slits) on the paper for the passage of the feces. Menter's device is substantially a paper patent. It can not function as it is intended.

Pang's device is permanently installed in the, e.g. toilet. It is not a

one-time-use device as the present invention. Its materials and construction are very different from the present invention. Because the Pang's device is not a one-time-use device, it has the problem of becoming dirty in its application, and it is difficult to be cleaned.

Menter's device is a one-time-use device. Pang's device is permanently installed device. These two types of device often have very different criteria in their design, construction, and material. It is not obvious to combine those two types of devices.

The present invention has many advantages in its effectiveness, simplicity, and low cost. The Menter's device and Pang's device have been disclosed for a long time, but the lack of implementation of a device like the present invention is a good indication that the present invention is not obvious to a person in the state of the art in reference to either Menter's device or Pang's device, or combination of the two.

2. For claims (new) 29-33 and 35-37 that are rejected under 35 U.S.C 102(b) in the section 4 of pages 4 of the final office action on 8/29/2005.

That the examiner rejected claims (new) 29-33 and 35-37 under 35 U.S.C 102(b) is also baseless.

As the applicant had already explained in section 4 of page 5 of the response on 6/21/2005 to the second OA dated on 2/22/2005: "The present invention is different from Menter's invention in both principle and structure". The examiner has been insisting his opinion without providing a reasonable explanation.

The floating arm of the present invention have a free end, which makes the floating arm movable (line 18 of page 4 to line 8 of page 5 the present application), such that it can yield to the falling feces to let the feces pass. While Menter's device

does not have such structure and function. The examiner insisted to call the material between the open slits of Menter's device as floating arm, but this "floating arm" can not move, it will hold the falling feces, and the device will be sunk because of holding the feces. The applicant has described this problem in application (line 12 to 19 of page 2 of the present application).

The floating arms of the present invention form a substantially complete coverage of the area that the device intends to cover. The space between the adjacent floating arms is not desirable (line 9 to 15 of page 5 of the present application). While, Menter's "floating arms", as the examiner insisted to call, can not form a high percentage of coverage. It has to have the opening, i.e. the slits in a good size, to form the passage for the falling feces, otherwise, the device will be sunk and becomes not functional.

Menter's device simply does not have a part that is same as the floating arm of the present invention in either structure or function.

Furthermore, the floating arms of the present invention is to damper the impact of the falling feces and meanwhile to maintain a substantially complete coverage of the surface of the water (line 16 to 19 of page 6 of the present application). The function of the slits is to "allow the rapid passage of excreta" (col. 2, lns. 35, 36), which functions just opposite of the floating arms of the present invention.

CLAIMS APPENDIX:

Claim 29 (new): A splash-prevention device comprising a sheet of paper with plurality of floating arms.

Claim 30 (new): The splash-prevention device of claim 29, wherein the said floating arms are formed by cut into the said sheet of paper.

Claim 31 (new): The splash-prevention device of claim 30, wherein the said floating arms are in number of four to eight.

Claim 32 (new): The splash-prevention device of claim 31, wherein the said sheet of paper carrying functional agents.

Claim 33 (new): The splash-prevention device of claim 32, wherein the said functional agents including disinfectants.

Claim 34 (new): The splash-prevention device of claim 29, wherein the said floating arms are formed by cut into the said sheet of paper; the said sheet of paper is made of porous material; the said sheet of paper further comprising wax coating, wherein the said sheet of paper further carries disinfectants, wherein the said floating arms are in number of four to eight.

Claim 35 (new): A splash-prevention device comprising a sheet of paper, wherein the said sheet of paper comprising means for substantially complete coverage over the surface of the liquid within the outer periphery of the said sheet of paper and

meanwhile for the passage of substantially solid object through the said sheet of paper.

Claim 36 (new): A splash-prevention device of claim 35, wherein the said means for substantially complete coverage over the surface of the liquid and for the passage of substantially solid object comprising plurality of floating arms.

Claim 37 (new): A splash-prevention device of claim 36, wherein the said floating arms are formed by cut into the said sheet of paper.

EVIDENCE APPENDIX:

None.

RELATED PROCEEDINGS APPENDIX:

Order of the Board of Patent Appeals and Interferences, which was mailed on July 28, 2008, and is attached.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TOM YUXIN ZHU

Appeal No. 2008-2807
Application 10/730,447

Mailed: July 28, 2008

Before DALE M. SHAW, *Chief Appeals Administrator*
SHAW, *Chief Appeals Administrator*

ORDER REMANDING TO EXAMINER

A review of the file finds that the grounds of rejection of the claims as provided in the Appeal Brief filed February 1, 2006, under the heading "Grounds of rejection to be reviewed on appeal" is not provided in the brief. The grounds of rejection of the claims as provided in the Appeal Brief must be consistent with the last Office action of record, including any Advisory action responsive to any after

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final submissions. Each Grounds of rejection to be reviewed on appeal must be identified.

Additionally, further review of the file indicates that the Appeal Brief filed February 1, 2006, does not comply with 37 C.F.R. § 41.37(c) because it does not contain all required heading items. Specifically, 37 C.F.R. § 41.37(c)(1) requires the following heading items in the following order:

- (i) *Real party in interest.*
- (ii) *Related appeals and interferences.*
- (iii) *Status of claims.*
- (iv) *Status of amendments.*
- (v) *Summary of claimed subject matter.*
- (vi) *Grounds of rejection to be reviewed on appeal.*
- (vii) *Argument.*
- (viii) *Claims appendix.*
- ✓ (ix) *Evidence appendix.*
- (x) *Related proceedings appendix.*

Upon an in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief and are not complete:

- ix) "Evidence Appendix",
- x) "Related Proceedings Appendix",

A substitute brief that is in compliance with § 41.37(c) is required.
See also Manual of Patent Examining Procedure (MPEP) § 1205.02 (8th ed. Rev. 6, Sept 2007) for details.

CONCLUSION

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) to hold the Appeal Brief filed on February 1, 2006 defective;
- 2) notify Appellant to file a paper properly addressing the Grounds of Rejection of all claims;
- 3) notify Appellant to file a paper properly addressing the Evidence Appendix;
- 4) notify Appellant to file a paper properly addressing the Related Proceedings Appendix; and
- 5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/ewh

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